

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD K. STERN

Plaintiff,

- against -

RITA COSBY and HACHETTE BOOK GROUP
USA, INC., d/b/a Grand Central Publishing, and
JOHN or JANE DOE,

Defendants.

No. 07 Civ. 8536 (DC)

**DECLARATION OF
ELIZABETH A. McNAMARA**

REDACTED

ELIZABETH McNAMARA, under penalty of perjury and pursuant to 28 U.S.C. § 1746,
declares:

1. I am a partner at Davis Wright Tremaine LLP, counsel for defendant Rita Cosby in this action.
2. I make this affidavit in support of Cosby's motion for summary judgment and for the limited purpose of attaching documents relevant to that motion.

Deposition Testimony

3. Attached as Exhibit A are relevant excerpts of the deposition of Larry Birkhead.
4. Attached as Exhibit B are relevant excerpts of the deposition of Patrik Simpson.
5. Attached as Exhibit C are relevant excerpts of the deposition of Pol Atteu.
6. Attached as Exhibit D are relevant excerpts of the deposition of Wilma
mine.
7. Attached as Exhibit E are relevant excerpts of the deposition of Mark Speer.

8. Attached as Exhibit F are relevant excerpts of the deposition of Howard K. Stern, as an individual.

9. Attached as Exhibit G are relevant excerpts of the deposition of Jack Harding.

10. Attached as Exhibit H are relevant excerpts of the deposition of Bruce Littlefield.

Stern Has Repeatedly Been Accused of Perjury

11. Attached as Exhibit I is a true and correct copy of the Affidavit of Russell Hardin, Jr. and attached exhibits, who was trial counsel in the probate proceeding involving the estate of J. Howard Marshall, II, in Harris County, Texas. Hardin notes that Stern “surreptitiously took from counsel’s table Pierce Marshall’s financial statement.” According to Mr. Hardin, Stern then made a photocopy of the financial statement and sent that document to be filed in a bankruptcy court in California, where it was ultimately posted on the internet. While Stern was rebuked by the Texas Probate Court for this conduct, and “admitted that he had obtained the statement from opposing counsel’s table,” Stern claimed that he did not know that the information was confidential. That exchange is reflected in Exhibit “A” to Mr. Hardin’s affidavit. In that same affidavit, Mr. Hardin refutes sworn testimony that was given by Mr. Stern less than a year ago in another federal matter – which is being prosecuted by the O’Quinn firm against Mr. Stern – wherein Stern denied any involvement with the transmittal of Mr. Marshall’s financial statement to the California probate court.

12. Attached as Exhibit J is a true and correct copy of

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Documents from *Birkhead v. Marshall*, the Paternity Action

13. Attached as Exhibit K are true and correct copies of Larry Birkhead's declarations submitted in his paternity action, *In re Birkhead v. Marshall*, in the Superior Court of California, County of Los Angeles.

14. Attached as Exhibit L is a true and correct copy of the declaration of Laurie Payne in the paternity action, *In re Birkhead v. Marshall*.

15. Attached as Exhibit M is a true and correct copy of the Declaration of Gaither Ben Thompson in support of Petitioner's Opposition to Respondent's Motion to Quash and/or Dismiss, dated November 8, 2006 in the *In re Birkhead v. Marshall* paternity suit.

16. Attached as Exhibit N is a true and correct copy of the Supplemental Declaration of Gaither Bengene Thompson in Support of Petitioner's Opposition to Respondent's Motion to Quash and/or Dismiss.

Documents from Inquest in Bahamas into Daniel Smith's Death

17. Attached as Exhibit O is a true and correct copy of Ford Shelley's sworn statement to the Royal Bahamas Police Force, dated November 17, 2006.

18. Attached as Exhibit P is a true and correct copy of Howard K. Stern's sworn statement to the Royal Bahamas Police Force, dated September 10, 2006.

Documents from Broward County, Fl., Body Custody Hearing

19. Attached as Exhibit Q are true and correct copies of the transcripts from February 15, 16, 20, 21 and 22, 2007, of the body custody hearings in Broward County, Florida. Due to their volume, the transcripts are being submitted in disk format.

PEJ Report and Stern's Affidavit in the Inquest

20. Attached as Exhibit R is a true and correct copy

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21.

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Document from *Opri v. Birkhead*

22. Attached as Exhibit S is a true and correct copy of Debra A. Opri's petition to compel binding arbitration in the lawsuit she filed against Larry Birkhead in the Superior Court of California, County of Los Angeles.

Document from *Stern v. O'Quinn*

23. Attached as Exhibit T is a true and correct copy of Stern's complaint against John O'Quinn filed in April 2007.

Documents Regarding Anna and Stern's Deals with the Media

24.

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25.

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26.

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Other Books About Anna

27. Attached as Exhibit X is a true and correct copy of the relevant portions of the book, *Great Big Beautiful Doll: The Anna Nicole Smith Story*, by Eric and D'Eva Redding.

Media Coverage of Anna's Marriage to Marshall and the Ensuing Inheritance Litigation

28. Attached as Exhibit Y is a true and correct copy of Anna Nicole Smith's obituary, describing her as the "most famous gold digger in America," and as a "courtesan."

29. Attached as Exhibit Z are true and correct copies of articles reflecting that Stern was among Anna's lawyers in the litigation that ensued over her claim to her late husband's estate, estimated to be worth approximately \$450,000,000.

Media Coverage of Stern and Birkhead's Paternity Dispute

30. Attached as Exhibit AA are true and correct copies of press coverage reflecting that in June 2006, Larry Birkhead first announced that he was the father of Anna's baby, that he later appeared on shows to declare his paternity, and reporting their negotiations.

31. Attached as Exhibit BB are true and correct copies of press coverage reflecting that on October 2, 2006, Larry Birkhead filed a paternity action in Los Angeles and the resulting commentary.

Media Coverage Following Daniel and Anna's Death

32. Attached as Exhibit CC are true and correct copies of press coverage evidencing that Stern was implicated in Daniel Smith's death.

Harding's Statements to the Press

33. Attached as Exhibit DD is a true and correct copy of an article *In Touch Weekly* in which Jack Harding makes statements that Dannielynn would have had trace amounts of drugs in her system and that he suspected "foul play."

34. Attached as Exhibit EE is a true and correct copy of the *In Touch Weekly*'s reporters notes confirming the statements in the *In Touch Weekly* article that were produced in this action.

35. Attached as Exhibit FF is a true and correct copy of various televised appearances by Jack Harding.

36. Attached as Exhibit GG is a true and correct copy

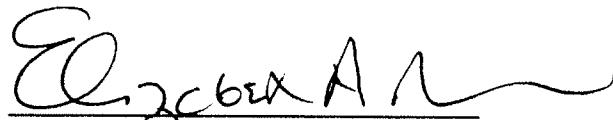
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Relevant Unpublished Case Law

37. Attached as Exhibit HH is a true and correct copy of the decision issued by the California Superior Court, County of Los Angeles on November 3, 2006 in *Spears v. US Weekly LLC, et al*, dismissing Britney Spears' defamation claim.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 15, 2008.



ELIZABETH A. McNAMARA